OUSENG SAMA-AE

v.

PP

COURT OF APPEAL, PUTRAJAYA
ZAINUN ALI JCA
HISHAMUDIN MOHD YUNUS JCA
RAMLI ALI JCA
[CRIMINAL APPEAL NO: D-05-85-2008]
11 MAY 2010

CRIMINAL LAW: *Dangerous Drugs Act 1952 - Section 39B(1)(a) - Trafficking in cannabis - Appeal against conviction and sentence - Whether judge made proper appraisal of evidence - Whether defence failed to raise reasonable doubt*

This was an appeal against the decision of the High Court judge who had convicted the appellant (the accused), a Thai national, of the charge of trafficking in 1996.7 grams of cannabis, a capital offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ('DDA') and had sentenced him to death under s. 39B(2) of the DDA. Briefly, earlier, on 17 July 2003, at the trial before the High Court, at the close of the prosecution, the trial judge had amended the charge against the accused. The trial judge found that the prosecution had failed to establish a *prima facie* case of trafficking in cannabis against the accused and had only succeeded in establishing a *prima facie* case of a lesser offence: the offence of possession of cannabis under s. 6 of the DDA, punishable under s. 39A(2) of the DDA. The accused pleaded guilty and was sentenced accordingly. The public prosecutor (respondent herein) was dissatisfied with the decision of the trial judge in reducing the charge to that of possession of cannabis and appealed to the Court of Appeal. On 20 November 2007, the Court of Appeal allowed the public prosecutor's appeal, set aside the conviction and sentence of the High Court and remitted the case back to the High Court directing it to call for the defence on the original charge of trafficking under s. 39B(1)(a) DDA. On 1 April 2008, at the close of the case for the defence, the learned judge found that the accused had failed to raise a reasonable doubt against the prosecution case. He was convicted and sentenced accordingly. Hence, this appeal by the accused.

Held (dismissing the appeal; affirming conviction and sentence of High Court)
Per Hishamudin Mohd Yunus JCA delivering the judgment of the court:

(1) The trial judge had carefully considered the evidence of the accused and he did not accept the accused's explanation about the existence of Ayub; about as to how he came to be at the house of one Abang Mat carrying the bag containing the cannabis with him; as to why he had shivered and urinated in his trousers upon PW3 discovering the cannabis in the bag that he had carried; and as regards to his knowledge as to the contents of the bag. The judge had correctly come to the conclusion that the defence had failed to raise any reasonable doubt; and that the prosecution had proved their case beyond reasonable doubt. The judge had made a proper appraisal of the entire evidence before him and had arrived at a correct, fair and just decision. His findings were in accord with the evidence before him. The account given by the accused was inherently incredible, and hence there was no reason whatsoever to disturb the finding. (paras 17 & 18)

(2) Counsel for the appellant had submitted that the trial judge's findings at the close of the defence case were at variance with his findings at the close of the prosecution case. In this judgment, there were no conflicting grounds of judgment; nor was there any error of law on the part of the judge. It is elementary that once the Court of Appeal (in the earlier appeal) had overruled the findings and rulings of the trial judge made at the close of the case for the prosecution and had instead made a finding of possession of cannabis, had invoked the presumption of trafficking under s. 37(da)(vi) and had ordered the trial judge to call for the defence on the original charge of trafficking, in such a situation, whatever findings and rulings of the trial judge expressed earlier at the close of the prosecution stage, to the extent that they had been expressly or impliedly contradicted or overruled by the Court of Appeal, as a matter of law, are now no longer of any significance when he proceeded to hear the defence; and he must at the continued hearing stage discard those findings and rulings that he had earlier made. He must now have due regard to the findings and rulings of the Court of Appeal as if those findings and rulings of the Court of Appeal had been made by the trial judge himself at the close of the case for the prosecution. It was

therefore wrong in law to say that the present grounds of judgment of the judge was in conflict with his earlier grounds of judgment. (para 21)

Bahasa Malaysia *Translation Of Headnote*

Ini adalah rayuan terhadap keputusan Hakim Mahkamah Tinggi yang telah mensabitkan perayu (tertuduh), seorang warganegara Thai, dengan pertuduhan pengedaran 1996.7 gram cannabis, satu kesalahan hukuman mati di bawah s. 39B(1)(a) Akta Dadah Berbahaya 1952 ('DDA') dan menjatuhkan hukuman mati ke atas perayu di bawah s. 39B(2) DDA. Secara ringkas, pada 17 Julai 2003, di perbicaraan Mahkamah Tinggi, pada akhir kes pendakwaan, hakim bicara telah meminda pertuduhan terhadap perayu. Hakim bicara mendapati bahawa pihak pendakwaan telah gagal membuktikan kes *prima facie* pengedaran cannabis terhadap tertuduh dan hanya dapat membuktikan kes *prima facie* kesalahan yang lebih ringan: kesalahan milikan cannabis di bawah s. 6 DDA, yang dihukum di bawah s. 39A(2) DDA. Tertuduh mengaku salah dan dijatuhkan hukuman. Pihak pendakwaraya (responden) tidak puas hati dengan keputusan hakim bicara dalam mengurangkan pertuduhan ke pertuduhan milikan cannabis dan membuat rayuan di Mahkamah Rayuan. Pada 20 November 2007, Mahkamah Rayuan membenarkan rayuan pihak pendakwaraya, mengenepikan sabitan dan hukuman Mahkamah Tinggi dan mengembalikan kes ke Mahkamah Tinggi dengan arahan memanggil pembelaan atas pertuduhan original pengedaran di bawah s. 39B(1)(a) DDA. Pada 1 April 2008, di akhir kes pembelaan, hakim telah mendapati bahawa tertuduh telah gagal menimbulkan keraguan munasabah terhadap kes pendakwaan. Tertuduh disabitkan dan dihukum sekadarnya. Oleh itu, rayuan ini oleh tertuduh.

Diputuskan (menolak rayuan; mengekalkan sabitan dan hukuman)
Oleh Hishamudin Mohd Yunus HMR menyampaikan penghakiman mahkamah:

(1) Hakim bicara telah mempertimbangkan keterangan tertuduh dengan teliti dan tidak menerima penjelasan tertuduh mengenai kewujudan satu Ayub; bagaimana tertuduh boleh berada di rumah satu Abang Mat dengan membawa bag yang mengandungi cannabis dengannya; mengapa tertuduh telah menggigil dan terkencing di dalam seluarnya apabila PW3 menemui cannabis di dalam beg yang dibawa olehnya; dan

A mengenai pengetahuannya berkenaan apa yang terkandung di dalam beg tersebut. Hakim telah mencapai kesimpulan yang betul apabila memutuskan pembelaan telah gagal menimbulkan keraguan munasabah dan pihak pendakwaan telah membuktikan kes mereka melampaui keraguan munasabah. Hakim telah B menilaikan keseluruhan keterangan yang ada di hadapannya dan telah membuat keputusan yang betul, adil dan tepat. Dapatan-dapatan hakim adalah selaras dengan keterangan di hadapannya. Versi yang diberi oleh tertuduh adalah jelas tidak boleh dipercayai, oleh itu tiada sebab untuk mengganggu dapatannya.

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(2) Peguam perayu telah mengemukakan bahawa dapatan-dapatan hakim bicara di akhir kes pembelaan adalah berbeza dengan dapatannya di akhir kes pendakwaan. Di dalam penghakiman ini, tidak terdapat percanggahan di dalam alasan-alasan D penghakiman; juga tidak terdapat kesalahan undang-undang dari pihak hakim. Ia adalah asas apabila Mahkamah Rayuan (di dalam rayuan sebelum ini) telah menolak dapatan-dapatan dan keputusan hakim bicara yang dibuat di akhir kes pendakwaan dan telah membuat dapatan mengenai milikan cannabis, telah E membangkitkan anggapan pengedaran di bawah s. 37(da)(vi) dan telah memerintahkan hakim bicara untuk memanggil pembelaan atas pertuduhan pengedaran yang original, di dalam keadaan sedemikian, apa-apa dapatan-dapatan dan keputusan hakim bicara yang dinyatakan sebelum ini di akhir kes pendakwaan, F sehingga ia telah disanggah atau ditolak oleh Mahkamah Rayuan secara nyata atau tersirat, sebagai perkara undang-undang, sekarang bukanlah penting apabila beliau terus mendengar pembelaan; dan beliau mesti pada tahap penyambungan perbicaraan mengenepikan dapatan-dapatan dan G keputusan yang beliau telah putuskan dahulu. Beliau mesti sekarang memberikan perhatian sewajarnya mengenai dapatan-dapatan dan keputusan Mahkamah Rayuan seolah-olah dapatan-dapatan dan keputusan Mahkamah Rayuan telah dibuat oleh hakim bicara sendiri pada akhir kes pendakwaan. Oleh itu ia H adalah salah dari segi undang-undang untuk menyatakan bahawa alasan-alasan hakim dalam penghakiman ini adalah bertentangan dengan alasan-alasannya di dalam penghakiman sebelum ini.

Case(s) referred to:

PP v. Ouseng Sama-Ae [2008] 1 CLJ 337 CA ***(refd)***

I *Yong Su Wan v. PP [1998] 3 CLJ (Supp) 419 HC* ***(refd)***

Legislation referred to:
Dangerous Drugs Act 1952, ss. 6, 37(da)(iv), (vi), 39A(2), B(1)(a), (2)

For the appellant - Sivanesan; M/s Vicknaraj, RD Ratnam, Rajesh Kumar & Assocs
For the respondent - Kwan Lisa DPP; AG's Chambers

[Appeal from High Court, Kota Bharu; Criminal Trial No: 45-6-2002]

Reported by Suhainah Wahiduddin

JUDGMENT

Hishamudin Mohd Yunus JCA:

[1] This is an appeal against the decision of the learned judge of the High Court of Kota Bharu who, on 16 June 2008, had convicted the appellant (the accused) of the charge of trafficking in 1996.7 grams of cannabis, a capital offence under s. 39B(1)(a) of the Dangerous Drugs Act 1952 ('the DDA'), and had sentenced him to death under s. 39B(2) of the DDA.

[2] The appellant, Mr Ouseng Sama-Ae, is a Thai national. The charge against him states:

> Bahawa kamu pada 10/1/2002 jam lebih kurang 3.20 petang berada di beranda rumah (GDMA 8/1) Kg. Berek, Gong Dermin, Banggu, 16150 Kota Bharu di dalam Jajahan Kota Bharu, di dalam Negeri Kelantan didapati mengedar dadah berbahaya jenis "Cannabis" berat bersih 1996.7 gram, dengan itu kamu telah melakukan satu kesalahan di bawah seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 (Semakan Akta 1980) dan boleh dihukum di bawah seksyen 39B(2) Akta yang sama.

[3] The present hearing before us is not the first time that this case has come before the Court of Appeal. We shall narrate briefly the history of this case. Earlier, on 17 July 2003, at the trial before the High Court, at the close of the case for the prosecution, the learned trial judge had, after hearing submissions, amended the charge against the accused. The learned judge found that the prosecution had failed to establish a *prima facie* case of trafficking in cannabis against the accused. The learned Judge found that the prosecution had only succeeded in establishing a *prima facie* case of a lesser offence: the offence of possession of cannabis under s. 6 of the DDA, punishable under s. 39A(2) of the DDA. When the

learned judge called upon the accused to enter his defence on the reduced charge of possession of cannabis, he pleaded guilty and was sentenced accordingly.

[4] The public prosecutor (now the respondent before us) was dissatisfied with the decision of the learned trial judge in reducing the charge to that of possession of cannabis. He appealed to the Court of Appeal. On 20 November 2007 the Court of Appeal allowed the public prosecutor's appeal. The Court of Appeal ruled that the learned judge erred in ruling that the prosecution had failed to establish a *prima facie* case of trafficking in cannabis and in reducing the charge to that of possession of cannabis. The Court of Appeal set aside the conviction and sentence of the High Court and remitted the case back to the High Court directing the High Court to call for the defence on the original charge of trafficking under s. 39B(1)(a) of the DDA.

[5] On 1 April 2008 the trial before the High Court of Kota Bharu was continued before the same trial judge. In accordance with the direction of the Court of Appeal, the learned trial judge called upon the accused to enter his defence on the original charge of trafficking. The accused elected to give evidence on oath. At the close of the case for the defence, after having heard submissions, the learned judge found that the accused had failed to raise a reasonable doubt against the prosecution case. He was convicted and sentenced accordingly. The accused appealed to the Court of Appeal against the conviction and sentence. It is this appeal that we are now hearing.

[6] The judgment of the Court of Appeal in the earlier appeal is reported in the law journal (see *Pendakwa Raya v. Ouseng Sama-Ae* [2008] 1 CLJ 337). The judgment clearly sets out the facts of the case. They are as follows:

> The facts relevant to the appeal are as follows. On January 10, 2002, Assistant Superintendent of Police Ramli Muda (PW3) acting on information he received proceeded to house GDMA 8/1 at Kampong Berek, Gong Dermin, Banggu, Kota Bharu. He was accompanied by a police party. On arrival at the scene, PW3 and his team lay in ambush. He observed the accused in the veranda of the house. PW5 (Tuan Mazlan bin Tuan Yusof) testified as to how the accused came to be there. This witness was seated under a tree near the house in question. He saw a Kancil motor car arrived. The accused alighted from the car. He was carrying a red bag (exh. P18). It was slung over his right shoulder. He went up to the house

and knocked on the door. It was opened by Tuan Mazlan bin Tuan Yusof (PW6). The accused asked for PW8 (PW6's father). PW8 was not at home at the time. He returned later. PW6 then informed Eyot bte Kidar (PW7) of the accused's arrival. PW7 emerged for a moment, had a look at the accused and then returned to the kitchen to fetch him some refreshment. The accused then took a seat in the veranda of the house. PW8 then arrived and about 10 minutes passed. It was at this stage that PW3 approached the accused and introduced himself to the accused as a police officer. The accused began to shiver and urinated in his trousers. PW3 seized exh. P18 and searched it. In it he found a substance which on subsequent chemical analysis was found to be 1996.7 grams of cannabis. The accused was later charged for trafficking in that drug.

[7] The Court of Appeal, in its judgment, explained why on the evidence there was a *prima facie* case established on the original charge of trafficking under s. 39B(1)(a) of the DDA. It is explained in the following manner:

Now, in order to establish a *prima facie* case against the accused by the reliance on the presumption under section 37(da) of the Act, the prosecution had to prove: (i) that the accused was in actual physical possession of the drug in question; and (ii) that the accused at the material time had knowledge of the drug found to be in possession, that is to say that he had '*mens rea* possession': See *PP v. Badrulsham b Baharom* [1988] 2 MLJ 585. The first element was easily established here because the accused did have custody and control of the bag. Indeed, it is quite clear from the evidence that he was exercising dominion over exh. P18 at all material times. The only question is whether he had mens rea possession. Like any other mental ingredient in an offence, this is to be inferred from the proved and admitted facts of each case.

As Lord Diplock said in *Ong Ah Chuan v. PP* [1981] 1 MLJ 64:

> Proof of the purpose for which an act is done, where such purpose is a necessary ingredient of the offence with which an accused is charged, presents a problem with which criminal courts are very familiar. Generally, in the absence of an express admission by the accused, the purpose with which he did an act is a matter of inference from what he did. Thus, in the case of an accused caught in the act of conveying from one place to another controlled drugs in a quantity much larger than is likely to be needed for his own consumption the inference that he was transporting them for the purpose of trafficking in them would, in the absence of

A any plausible explanation by him, be irresistible - even if there were no statutory presumption such as is contained in s 15 of the Drugs Act.

As a matter of common sense the larger the quantity of drugs involved the stronger the inference that they were not
B intended for the personal consumption of the person carrying them, and the more convincing the evidence needed to rebut it. (emphasis added).

Now apply that approach here. The accused came from some other place to the house in question. He brought exh. P18 along
C with him. The drug found in the bag exh. P18 - almost 2 kg of cannabis - was far in excess of what may be needed for personal consumption. In the absence of any explanation from the accused it is a fair inference the drug was obviously intended for some person, known or unknown to the accused. Or, to borrow the more elegant
D words of Lord Diplock in Ong Ah Chuan, it is a fair inference that the accused's purpose here was "to part with possession of the drug or any portion of it to some other person whether already known to him or a potential purchaser whom he hopes to find".

Now, add to all this the demeanour of the accused when
E confronted by PW3. As we have already said, he began shivering and urinated in his trousers. These are sure signs of fear. If taken alone they may be equivocal in terms of evidentiary value. But there is the other evidence to which we have already adverted. And when taken together, the conduct of the accused on being confronted
F lends strength to the *prima facie* inference that he had *mens rea* possession of the proscribed drug. We may add that evidence of the accused's such conduct is plainly admissible by virtue of s 8 of the Evidence Act 1950.

[8] The Court of Appeal then ruled as follows:

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In our respectful view, the learned trial judge did not adequately evaluate the prosecution's evidence and draw the irresistible inferences admitted by that evidence. Had he done so, he would have come to the conclusion that the prosecution had made out a *prima facie* case of trafficking. This, then, in our view is the first
H error into which the learned judge fell.

[9] The Court of Appeal made it very clear that on the evidence and facts of the case the accused had possession of the cannabis. He had custody and control of the bag and had knowledge as to
I what was inside it, and hence the presumption of trafficking under

s. 37(da)(vi) of the DDA applies against the accused and that the accused has the burden of rebutting the presumption. The Court of Appeal ruled:

> It was also for him to rebut the presumption of trafficking raised against him by the operation of s. 37(da) of the Act.

[10] Section 37(da)(vi) provides:

> Presumptions.
>
> 37. In all proceedings under this Act or any regulation made thereunder:
>
> (da) any person who is found in possession of:
>
> (vi) 200 grammes or more in weight of cannabis;
>
> otherwise than in accordance with the authority of this Act or any other written law, shall be presumed, until the contrary is proved, to be trafficking in the said drug;

[11] The accused has to rebut the above statutory presumption of trafficking on a balance of probabilities.

[12] In the present case, however, the accused, in his defence, just like in most cases involving the statutory presumption of trafficking, did not elect to rebut the presumption. Instead, his defence was fundamental in nature: he maintained that the bag did not belong to him and he denied having had knowledge that the bag in question contains cannabis. In other words, he was disputing the very basic fact on which the presumption depends. He denied that he was in possession of the cannabis as he was not aware as to what was inside the bag. This being the position that he had taken, he, therefore, needs only to raise a reasonable doubt against the prosecution's case (see *Yong Su Wan v. Public Prosecutor* [1998] 3 CLJ (Supp) 419). Has he succeeded in doing so?

[13] In his evidence the accused did not deny having brought the bag to the veranda of the house, but he maintained that he did not know what was inside it. He explained how he came to be associated with the bag. He said that on the day in question, at about two in the afternoon, a friend of his by the name of Ayub, whom he had known for 14 years, had asked him (the accused) to accompany him (Ayub) to a place called Gunung. They went in a Kancil car driven by Ayub. The accused sat in front next to Ayub. In the car he saw a red bag placed near Ayub's right leg. While in

A the car Ayub made a phone call. Ayub then asked the accused whether he had a friend living in that area. The accused told Ayub that he had - a friend whom he called 'Abang Mat'. So they proceeded to the house of the said Abang Mat. On arriving there, Ayub asked the accused to get off the car and to carry the red bag
B to the house. The accused asked Ayub as to the content of the bag but was told by the latter that he need not have to know.

[14] According to the accused he went up the veranda of the house of Abang Mat carrying the bag with him. Ayub drove off in
C the Kancil car. He did not know where Ayub went. Ayub only told him that he had to go and fetch something that he had inadvertently left behind. At the veranda the accused sat on the floor, leaning on a wall. He placed the bag near the railing of the veranda. Abang Mat was not at home. While he was sitting, a
D policeman whom he knew by the name of Minhat came and asked for Abang Mat. The accused got down from the veranda and shook hands with Minhat who was then seated in a car; and he told Minhat that Abang Mat was not at home. Minhat then left the house.

E **[15]** In his evidence, the accused said that about 20 minutes later Abang Mat came home. While he was having coffee with Abang Mat at the veranda, two cars arrived at the house and several policemen alighted from the cars. Minhat was among them. They
F came to the veranda and one of them by the name of Tuan Ramli opened the bag and said, 'Ini ganja'. The accused said he was frightened and urinated in his pants. He was arrested.

[16] We are satisfied that the learned trial judge had given due consideration to the evidence of the accused. His analysis of the
G accused's evidence is as follows:

> Pihak pembelaan turut merujuk kepada penjelasan yang diberikan oleh tertuduh kenapa dia telah terkencing dalam seluarnya, iaitu dia telah terperanjat dan berasa takut apabila diserbu oleh orang-orang
H yang tidak kenalinya. Lebih-lebih apabila salah seorang daripada mereka (SP3) membuka beg merah (Eks. P18) sambil berkata "ini ganja" setelah melihat kandungannya. Menurut peguambela itu, fakta ini tidak boleh dikaitkan bagi menunjukkan pengetahuan tertuduh tentang ganja dalam beg merah tersebut. Saya mendapati pembelaan ini merupakan suatu fikir semula (afterthought) kerana
I tiada SP3 atau mana-mana saksi pendakwa yang lain telah diperiksa balas tentang ungkapan yang dikatakan dibuat oleh SP3 itu.

Berkenaan dengan pembelaan ini, saya peka bahawa adalah suatu prinsip undang-undang yang mantap bahawa walaupun Mahkamah meragui sesuatu pembelaan yang tidak disarankan atau diletakkan (which has not been put) kepada saksi pendakwaan yang berkenaan, Mahkamah masih perlu menimbangkan pembelaan ini.

Bagi menunjukkan ketiadaan pengetahuan tertuduh, peguambela terpelajar telah menarik perhatian Mahkamah kepada keterangan tertuduh bahawa dia pertama kalinya melihat beg merah itu apabila dia naik kereta Kancil Ayub. Dia kononnya hanya diberikan beg itu untuk dibawa turun setelah sampai di rumah Abang Mat. Dia turut menyatakan Ayub telah menurunkannya di rumah Abang Mat kerana hendak berpatah balik untuk mengambil barang yang tinggal. Dalam hubungan ini, saya mendapati penjelasan yang diberikan oleh tertuduh itu amat tidak munasabah hingga boleh menimbulkan apa-apa keraguan ke atas kes pendakwaan. Pertamanya adalah tidak masuk akal bagi seseorang dalam perjalanan ke suatu tempat untuk menurunkan seorang penumpang yang dibawa bersamanya hanya untuk tujuan berpatah balik bagi mengambil sesuatu barang yang tertinggal. Lebih tidak masuk akal lagi apabila dia turut memberikan barang-barangnya kepada orang itu untuk dibawa turun bersama-samanya. Seperkara lagi saya juga mendapati bahawa keterangan yang diberikan oleh SP6, SP7 dan SP8 juga tidak menggambarkan bahawa tertuduh hanya singgah buat seketika di rumah itu sementara menunggu rakannya mengambilnya semula. Jika benar tertuduh hanya singgah buat sebentar, apa perlunya SP8 menyuruh isterinya SP7 membuat kopi. Lihat juga keterangan SP8 yang berikut yang tidak saya ragui kebenarannya:

> "Saya Tanya Mat Yie "Mari mana?" Mat Yie jawab "Mari balik sana".

Pada hemat saya keterangan ini jelas menunjukkan bahawa tertuduh baru masuk dari Thailand dan hendak pergi ke rumah SP8, bukan hanya sekadar diturunkan di situ sementara menanti rakannya datang mengambilnya semula.

Keterangan tertuduh ini juga ternyata tidak konsisten dengan keterangan awalnya di mana dia menyatakan beg merah (Eks. P18) berada di sebelah kaki kanan Ayub semasa dia memandu. Dengan menyatakan sedemikian tertuduh seolah-olah cuba menunjukkan bahawa Ayub sentiasa mahukan beg itu berada dengannya supaya tidak boleh diakses oleh mana-mana orang lain. Namun keterangannya ini tidak konsisten dengan keterangan yang diberikan selanjutnya apabila dia menyatakan Ayub telah memberikan beg itu kepadanya pula. Walau apa pun saya mendapati adalah amat tidak munasabah bagi Ayub meletakkan beg itu di bahagian kakinya semasa memandu setelah mengambil kira saiz beg itu dan ruang di

A tempat kaki pemandu kereta itu. Dan lagi, jika benar beg merah itu berada di bahagian kaki Ayub sudah pasti SP5 yang melihat tertuduh turun dari kereta akan melihat pemandu kereta itu memberikan beg itu kepada tertuduh setelah kereta itu berhenti. Dalam keadaan biasa adalah munasabah bagi seseorang pemandu
B untuk mengeluarkan apa-apa barang yang berada di tempat kakinya setelah kereta itu berhenti sebelum menghulurkannya kepada orang yang turun daripada kereta itu.

[17] It is clear from the above analysis of the evidence of the defence that the learned trial judge had carefully considered the
C evidence of the accused and that he did not accept the accused's explanation about the existence of Ayub; about as to how he came to be at the house of the said Abang Mat carrying the bag with him; as to why he shivered and urinated in his trousers upon PW3 discovering the cannabis in the bag that he had carried; and as
D regards to his knowledge as to the content of the bag. In our judgment, the learned judge had correctly come to the conclusion that the defence has failed to raise any reasonable doubt; and that the prosecution has proved their case beyond reasonable doubt. He expressed his findings in the following terms:

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Atas alasan-alasan yang dinyatakan di atas, saya dapati pembelaan tertuduh pada keseluruhannya merupakan satu pembelaan yang tidak munasabah yang dapat menimbulkan apa-apa keraguan ke atas kes pendakwaan. Dalam hal ini, saya dapati keterangan saksi-saksi pihak pendakwa adalah boleh dipercayai dan oleh itu, saya terima
F keterangan mereka sebagai benar. Lantaran itu, setelah menimbangkan dengan teliti kesemua keterangan di hadapan Mahkamah pada keseluruhannya, termasuk eksibit-eksibit, serta mengkaji segala penghujahan kedua belah pihak, saya mendapati pihak pembelaan telah gagal menimbulkan apa-apa keraguan yang
G munasabah ke atas kes pendakwaan. Oleh itu saya berpuas hati bahawa pihak pendakwa telah berjaya membuktikan kesnya terhadap tertuduh dengan melampaui keraguan yang munasabah, iaitu tertuduh telah memperedarkan dadah berbahaya jenis cannabis seberat 1996.7 gram pada hari dan di tempat seperti dalam pertuduhan. Seterusnya saya mensabitkan tertuduh atas pertuduhan
H di bawah seksyen 39B(1)(a) Akta Dadah Berbahaya 1952, dan menjatuhkan ke atasnya hukuman gantung sampai mati di bawah seksyen 39B(2) Akta tersebut.

[18] We are satisfied that the learned judge had made a proper
I appraisal of the entire evidence before him and had arrived at a correct, fair and just decision. His findings are in accord with the

evidence before him. We agree with his findings that the account given by the accused is inherently incredible, and hence we see no reason whatsoever to disturb the findings.

[19] Finally, there is one matter which we feel compelled to allude to. It is this. The learned counsel for the appellant, Encik Sivanesan, had submitted that the learned trial judge's findings at the close of the defence case were at variance with his findings at the close of the prosecution case. Learned counsel pointed out that earlier at the close of the case for the prosecution the learned trial judge had already ruled that the prosecution had failed to prove the charge under s. 39B of the DDA. The learned counsel referred to the following passages in the earlier grounds of judgment (the judgment that led to the earlier appeal to the Court of Appeal) where the learned trial judge said:

> Daripada keterangan saksi-saksi yang dihuraikan di atas, saya dapati bahawa P18 jelas berada dalam jagaan atau kawalan tertuduh pada masa itu. Bagaimanapun bagi membuktikan milikan sebenar pihak pendakwa hendaklah selanjutnya membuktikan bahawa tertuduh mempunyai pengetahuan tentang dadah yang terkandung dalam beg merah P18.
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> ...
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> Berdasarkan kepada penilaian saya ke atas keterangan kes pendakwaan ini saya dapati pendakwa telah gagal untuk membuktikan elemen-elemen milikan sebenar secara terus.

[20] In other words, according to learned counsel, there are now two conflicting grounds of judgments. But in order to better appreciate the point that learned counsel is making, perhaps, I should quote para. 9 of his written submission which is as follows:

> 9. In essence the learned Judge convicted the appellant upon the appellant giving sworn evidence, despite having found at the *prima facie* stage that the evidence of the prosecution witnesses is insufficient to convict him under section 39B of the Act. It is respectfully submitted that the evidence of the appellant corroborates the evidence of the prosecution.

[21] With respect to learned counsel, in our judgment there are no conflicting grounds of judgment; nor is there any error of law on the part of the learned judge. It is elementary that once the Court of Appeal (in the earlier appeal) had overruled the findings and rulings of the learned trial judge made at the close of the case for the

A prosecution and had instead made a finding of possession of cannabis, had invoked the presumption of trafficking under s. 37(da)(vi), and had ordered the learned trial judge to call for the defence on the original charge of trafficking, in such a situation, whatever findings and rulings of the learned trial judge expressed
B earlier at the close of the prosecution stage, to the extent that they had been expressly or impliedly contradicted or overruled by the Court of Appeal, as a matter of law, are now no longer of any significance when he proceeded to hear the defence; and he must at the continued hearing stage discard those findings and rulings that
C he had earlier made. He (as well as the parties before him) must now have due regard to the findings and rulings of the Court of Appeal as if those findings and rulings of the Court of Appeal had been made by the learned trial judge himself at the close of the case for the prosecution. This being the legal position, it is
D therefore wrong in law to say that the present grounds of judgment of the learned judge is in conflict with his earlier grounds of judgment.

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